

FUG MAIL SECTION

Federal Communications Commission

DA 96-1306

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DISPATCHED

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No.96-174
Table of Allotments,)	RM-8849
FM Broadcast Stations.)	
(Thomaston, Alabama))	

NOTICE OF PROPOSED RULE MAKING

Adopted: August 16, 1996

Released: August 23, 1996

Comment Date: October 15, 1996

Reply Comment Date: October 30, 1996

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Andrea Reynolds ("petitioner") requesting the allotment of FM Channel 249A to Thomaston, Alabama, as that community's first local aural transmission service. Petitioner stated that she, or an entity of which she is a part, will apply for Channel 249A if it is allotted to Thomaston, as requested.¹

2. A staff analysis of the proposal reveals that Channel 249A can be allotted to Thomaston, Alabama, consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules, provided the transmitter therefor is located at least 6.1 kilometers (3.8 miles) southwest of the community, utilizing coordinates 32-14-11 North Latitude and 87-40-46 West Longitude.^{2,3}

¹Petitioner also requests that as the initiating proponent to provide a first local aural transmission service to Thomaston, Alabama, that she be awarded a "petitioner's preference" at the application level, should Channel 249A be allotted to the community, as requested. Although a proposal is before the Commission to provide a "finders preference" to petitioners that have taken the initiative and burden of introducing new service to a community, final action on the request remains pending. See *Reexamination of the Policy Statement on Comparative Broadcast Hearings* (GC Docket No. 92-52), 7 FCC Rcd 2664 (1992).

²The site restriction is required to avoid a short spacing to the licensed site of Station WEZZ(FM), Channel 249A, Clanton, Alabama, at coordinates 32-50-08 North Latitude and 86-40-49 West Longitude.

³Petitioner proposed a transmitter site located 11.1 kilometers (6.9 miles) south of Thomaston at coordinates 32-10-00 North Latitude and 87-37-25 West Longitude. However, in determining compliance with Section 73.207(b) of the Commission's Rules, if a new proposed allotment requires a site restriction, the Commission will endeavor to impose that which is the least restrictive theoretical site from the intended community of license. See *Vacaville, California*, 4 FCC Rcd 8315 (1989), *recon. denied*, 6 FCC Rcd 143 (1991). It is not until the application stage that the actual availability of a particular site must be demonstrated. See *West Palm Beach, Florida*, 3 FCC Rcd 5810 (1988).

3. In consideration of the interest expressed in providing a first local aural transmission service to Thomaston, Alabama, we will propose to allot Channel 249A to that community. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, to include Thomaston, Alabama, as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Thomaston, Alabama	--	249A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before October 15, 1996, and reply comments on or before October 30, 1996, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Andrea Reynolds
2501 - 15th Street E, #214
Tuscaloosa, AL 35404

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding.

Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIXMM Docket No. 96-174
RM-8849

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239), at its headquarters, 1919 M Street, N.W., Washington, D.C.